The advantages of ambiguity? Development, rule formation and property rights during transition in China[i]

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Abstract: *Certainty and clarity of legally defined individual private property rights, protected by and from a constrained state, are doctrines of neoclassical economics-derived development theory. But absent these conditions, there may be alternative mechanisms to provide some protection for business development and property. Using a case study drawn from China, I will argue that collective, contested, ambiguous and perhaps absence of legally defined property rights - and a relatively unconstrained state with limited rule of law - has not led to a failure in economic development terms. In some cases there may have been advantages in the Chinese post-Maoist context with economic liberalisation reforms beginning in 1978, and with the building of meaning and institutions found in a transitional state, where rules are unclear and open to debate, and much is up for grabs. Indeed, ambiguity – where something can be understood in variable ways - may have allowed for innovation and experimentation in this transition.*

Keywords: Ambiguity, China, private property, property rights, economic development, rural land, de Soto, state owned enterprise, good governance, institutions, institution building.

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Certainty and clarity of legally-defined individual private property rights, protected by and from a constrained state, are doctrines of neoclassical economics-derived development theory. But absent these conditions, there may be alternative mechanisms to provide some protection for business development and property. Using a case study drawn from China, I will argue that collective, contested, ambiguous and perhaps the absence of legally defined property rights - and a relatively unconstrained state with limited rule of law - has not led to a failure in economic development terms. In some cases there may have been advantages in the Chinese post-Maoist context with economic liberalisation reforms beginning in 1978, and with the building of meaning and institutions found in a transitional state, where rules are unclear and open to debate, and much is up for grabs. Indeed, ambiguity – where something can be understood in variable ways - may have allowed for innovation[ii] and experimentation in this transition.

I use ambiguity in several, albeit overlapping, ways. First, both formal and informal rules in a transitional economy are ambiguous; and policy directions subject to change. For firms drawing on a history of pre-revolutionary commercial activity, gaps in existing rules allowed for often highly-networked entrepreneurial spirits to look for ways to expand in innovative, albeit sometimes hidden ways. Formal rules may catch up with practice at some stage. The existence of hidden-types of private property, particularly in the 1980s in the face of uncertain views on the desirability of private capitalist business, provides evidence for this. Ambiguity in this sense provides opportunities – if rules are not fixed and perhaps subject to change at a future date if success can be shown – this allows for experimentation in property forms, but also in business operations. More succinctly: ambiguity gives opportunity for innovation in institution formation in the face of ‘bad’ or unclear institutions. I think this is a novel argument. Secondly – and this is where this conception of ambiguity overlaps with Li (1996) - highly networked relationships between entrepreneurs and politicians can provide ways of getting around onerous or unhelpful rules and regulations, as well as marshalling resources to achieve business development – similar to the ‘greasing the wheel’ argument used for corruption. I would put this more strongly however – the lack of rule of law can see political and social networks substitute for legal protection. This can be in forms of collective ownership; highly networked and sometimes hidden private ownership; formally private but state-owned or controlled as in many listed firms; and locally or centrally state- owned, but highly networked with political and business elites. Property in this account is protected by politics, not law. Politics itself is inherently ambiguous and somewhat unpredictable, and demands maintenance. Fourth, while orthodox development models see certainty, formalisation and individualisation of property as positive end states – I would argue that just as ambiguity can have advantages in some cases, formalisation and certainty can also have disadvantages, particularly to non-elite groups who can find themselves dispossessed of property. I would also caution against seeing increasing formalisation of property rights without rule of law and judicial independence as more than indicators of how things might operate in practice: politics and expressions of power may still remain dominant, particularly in the Chinese environment where state and party pervades much of life. Finally, the Chinese case questions the assumption that ambiguity and various property forms including state-ownership are associated with less economic efficiency or poorer performance on other measures, raising questions regarding falsification of existing approaches. These arguments will be expanded and evidence provided in the rest of this paper.

Individual Property Rights in Development Theory

It does not overstate the matter to claim orthodox approaches in development see clear, legally-defined and individual property rights as a prerequisite for economic development (de Soto, 2000; Easterly & Levine, 2003; Sachs & Warner, 1997; Lin, 2012). This belief is central to neoclassical economics and neoliberal theory, with ‘economic theory’ and ‘most studies find[ing] a strong, positive correlation between secure private property and economic growth’ (Justesen, 2013, p. 452), including studies of ‘59 less developed and transitional countries’ (Goldsmith, 1995, p. 157) and 140 ‘developed, emerging, and frontier’ economies found in the International Country Risk Guide (Keefer & Knack, 1997). North (1989) notes the importance of private property rights in historical economic development in the West, with Acemoglu et al., (2001) arguing these institutions were transferred to the successful British settler colonies of North America and Australasia. Critiques note findings can vary depending on the countries studied, and that improving property rights has not always led to better economic performance (Barro & Sala-i-Martin, 2004; Chanda & Putterman, 2007). Drawing on neoclassical economics and neoliberal theory, and influenced by statistical studies, secure and clear individual property rights have been a central aspect of market- facilitating, ‘institution building’ and good governance models promulgated by development agencies for decades (Goldfinch et al., 2013).

One of the more influential approaches is that private property rights provide for certainty and commitment, and the reduction of transaction costs in the face of uncertainty. Individual property rights allow individuals to plan ahead both in their own investment decisions; and in relation to contractual dealings with individuals that might be unknown (North, 1989; Justesen, 2013). North (1989) argues the successful economic development of

England and British North America as compared to Spain and Iberian South America, was in part because of the successful establishment of institutions that facilitated exchange; and that the state was *constrained* from being an undermining influence.

Implicit in North's account, and explicit in others, is the assumption state ownership, particularly of trading assets, is inherently less efficient than privately owned assets. The state does not function as the individual optimising firm or individual of neoclassical equilibrium theory and so is considered inherently less efficient (Goldfinch, 2000). State planning is seen to be inferior to the self-regulating market and superior time-and-place dependent and changing knowledge and decisions of numerous individual actors coordinated through the market system (Hayek, 1982). Government action to correct so-called 'market failure' can lead to various types of government failure (Buchanan & Tullock, 1984). The state can be predatory with a tendency to expand its functions and expropriate private property, particularly in influential Public Choice and Hayekian accounts, while state economic activity can 'crowd-out' the more efficient market (Friedman & Friedman, 1980). Hence the state should be constrained not only in its powers and ability to expropriate private property, but also in its engagement within the wider trading economy, and perhaps its size generally, for economic development to proceed – i.e. private business and a constrained state are preferred. To this end, fiscal constraint, contracting out and privatisation were and remain key tenets of IMF, World Bank and other development agendas. Private property and private business provide useful constraints on state power (Friedman & Friedman, 1980). Good governance and institution building models focus on constraints to the predatory exercise of state power, such as rule of law and accountability and anti-corruption measures (Goldfinch et al., 2013).

Collective, traditional and unclear ownership are also seen as sub-optimal. In Hardin's (1968) 'Tragedy of commons', it is in the interests of each shepherd to increase herds to maximise individual return on common land; but also to minimise investment on upkeep as benefits are diffused to others. The outcome is the resource is depleted and potentially destroyed. This metaphor is employed to justify allocation of individual property rights over collectively held property, or where there are no clear ownership rights - particularly fisheries or forests - with privatisation or marketization the usual policy recommendation. One historical reading is enclosure of the Commons was a prerequisite for economic development, particularly in Britain (Libecap, 1986). Inherent in this and in orthodox economics and neoliberal approaches is a suspicion of collective action not only in the economy, but in political life - found from Smith's Invisible Hand, to Hayek's Spontaneous Order (Goldfinch, 2000). Returning to certainty: the (assumed) optimising and opportunistic individuals relied upon in collective action do not provide the apparent certainty and predictability of established institutions, including law, to allow for economic development; nor the optimal sum outcome of self-interested individual actions in a self- regulating and equilibrating market. Indeed, collective and political life, where meaning is contested and language is slippery, and where continually-renegotiated power shifts and can be uncertain, is inherently ambiguous (Best, 2008).

To sum this far, the orthodox account of the role of property rights in economic development goes something like this:

1. Individual, clearly and legally defined private property rights are central - perhaps essential – for economic development. Collective, ambiguous, fuzzy or absent

property rights lead to overuse and less investment, general uncertainty, and higher transactions costs.

2. A functioning, more-or-less legal/rational state is required to enforce and maintain private property rights. However, it should be largely limited to this role in the economy, as state ownership of trading assets is less beneficial to development, with state firms inherently less efficient and state actors prone to predation; i.e. a constrained and minimal state is optimal.
3. While sophisticated accounts are circumspect on the matter, individual private property rights are seen to assist the poor in economic terms. This can be perhaps over generations or through some trickle-down effect in the medium to long term – or more immediately in de Soto's (2000) account.
4. Policy prescriptions are for formalising private property rights and related institutions, and limiting state power, size and engagement in the economy, including through privatisation and developing 'good governance' and 'good' institutions.

But what about China? It fits few of the conditions outlined above, yet has seen remarkable economic growth to take it to the world's second biggest economy. Myriad albeit contested forms of ownership, including collective, networked local government and (sometimes hidden) private ownership of rurally-base town and village enterprises (TVEs) were an important factor in economic development. The Chinese state is not constrained as in neoliberal and good governance prescriptions and shows considerable divergence from OCED and other countries on property protection, democratic rights, state stability, rule of law and judicial independence, and other governance/corruption measures (Table 1). Rather than the private market dominated by publically-listed and/or individual firms acting as the engine of economic development, state-owned/controlled businesses remain important, with a power that extends beyond (albeit murky) apparent ownership and manifested through guidance, political and business networks and business groups. Moreover, the idea that formalising and establishing private property assists the poor is also questioned where recent privatisation and reallocation of collectively-owned rural land and collectively-owned enterprises has been at the relative and absolute socio-economic disadvantage of some groups, and where collective property has included elements of social support and income redistribution lost in this transition. I examine these issues further.

Collective and Rural Property Rights in China

Rural land is generally seen as collectively owned in China. This provides several challenges to orthodox accounts. First, collective ownership has co-existed with consolidation and steady increases in agricultural output and productivity, at the same time reducing poverty, and providing employment and social protection. Second, collective ownership has empowered farmers in their relationships with the market, but also provided degrees of property protection. Third, privatisation and individualisation of collective land, rather than helping the poor, seems to sometimes have the opposite effect in some cases. Finally, and controversially, collective ownership in formally rural areas has been associated with successful TVEs in various ways; including (but not only) acting as to shelter hidden or de facto private ownership in the face of absent or possibly troublesome institutions and political agendas. I will deal with these in turn.

Collective ownership is not new, with 30-40 percent of rural land controlled by village lineage organisations in some regions in pre-revolutionary times, albeit with sophisticated forms of property protection, including individual, in other areas (Hsing, 2010; Peng, 2004). After the Communist victory in 1949, initial land redistribution quickly changed to collectivisation, reaching its zenith/nadir in the 1958 to 1961/2 'Great Leap Forward' which saw centrally managed agricultural projects involving millions of peasants, communes with thousands of households, and 'reforms' intended to rapidly advance industry. Catastrophic mis-allocation of resources to failed industrial projects, brutal mis-management, and peasants quickly consuming stock and resources they justifiably feared would be seized, saw perhaps 45 million deaths from famine, exposure, forced starvation, overwork and execution (Dikötter, 2010). Limited reforms saw some focus on incentives, reporting and appointment of more qualified personnel, but any increases in output was largely accounted for by an increasing rural labour force. The failure of the commune system showed the predicted problems: free riding, inappropriate investment and incentives, tragedy of commons, predatory and incompetent and murderous state actors, and so on. But the end of the communes did not see the end of collective ownership: it evolved.

From 1979 agricultural land was de-collectivised, with communes abolished entirely by 1984. Agriculture was progressively liberalised. Land was redistributed under the 'household contract responsibility system' which gave responsibility for managing land to households and the right to a considerable portion of revenue generated, with profit from production above the initial quotas. Peasants were allocated land and required to cultivate it, pay relevant taxes and fees, and sell a quota of produce to the state. Households usually had considerable discretion on which crops to produce, but land use was limited to agricultural and prices were often set centrally. In 1985 contracts, largely set by local cadres, replaced quotas, whereby the state purchased a small proportion of grain after self-consumption needs were met, with the rest able to be sold on the open market (Zhang, 2007). These incentives encouraged increases in agricultural output and, along with increases in procurement prices, improved incomes of agricultural workers significantly. By the mid-1990s contract farming grew rapidly, pushed by central government modernisation of agriculture which looked to coordinate small holdings through vertical integration, providing capital, skills and marketing support, and formalisation of the law (Korff, 2008). A free grain market was introduced after 1998. By 2005 most rural household engaged in some sort of contract farming. There were annual increases in output of 6 percent and total factor productivity growth of 2 percent from 1978-2010, with China's per capita grain output reaching levels comparable to developed countries (Gautam & Yu, 2015; Zhang & Donaldson, 2013).

Formally, the state owns all land as specified in the PRC Constitution; although rural land is treated as it belongs to the collective, while urban belongs to the state (Hsing, 2010). The Land Administrative Acts of 1998 and 2004 suggest peasants own collective land (Liu et al., 2012; Mao, 2012)[iii]; although interpretations differ (Dongtao & Ouyang, 2012). Land cannot be lawfully transferred except to the state, which may then be able to transfer it to other uses, including private. Land can be, and commonly is, requisitioned for 'public interest' reasons. Self-built houses and private agricultural plots seem to be treated as privately owned. There is a strong belief amongst peasants that they own the land they till and the houses they inhabit, and they will organise - sometimes violently - against attempts to expropriate (Liu et al., 2012). There are inchoate forms of property recognition with 77 percent of rural household in one survey having documentation that purportedly recognised land rights, albeit with a minority being 'strictly law compliant' (Landesa, 2012). The

Chinese government continues to roll out land registration across the country, and collective property protection is seen to be improving over time (Mao, 2012).

It should not be assumed that de facto individual title has replaced collective title with the unwinding of the communes, however. Usage rights are allocated, rather than private ownership. Farmers can combine subsidence and commercial farming on private plots with collective and commercial farming on a larger scale. Usage rights can be contracted out, with the majority agreement of the collective (Mao, 2012), and rental markets have become increasingly important. As such, cooperative collectively-owned farming coexists with modern industrial farming. Zhang & Donaldson (2013, 18) shows how large scale commercial arrangements with agribusinesses employing thousands of workers are ‘shaped by rural collective land ownership and individualised land use rights in ways that benefit the farmer.’ Collective ownership has encouraged rural agricultural development and empowered farmers in interactions with agribusiness companies; including for small farmers who might be excluded from investment and marketing opportunities (Xie et al., 2013). Collective land near urban fringes has sometimes profited from supplying local markets. Subsidies for mechanisation, increasing use of fertiliser, some formalisation of collective land rights and extensive use of the rental market reaching 71 percent of operational land, and urban migration, have encouraged recent consolidation and an increase in plot sizes, with operational plots increasing from 0.9 hectares (2007) to 1.5 hectares (2011), with larger plots associated with higher productivity (Wang et al., 2015). Land serves beyond purely efficiency or market uses, providing housing and subsidence to community members (Yang, 2012). Moreover, in some cases, land is re-allocated depending on changing family sizes, returnees from urban migration, and other issues, with this supported by peasants, despite it being formally illegal (Kong & Unger, 2013). As such, collective institutions and strong lineage and other networks developed through the commune system and before persist, even if in tension with formal and legal institutions, and with mixed evidence of efficiency and/or output losses. State farms also continue to exist, although only accounting for 1 percent of the agricultural labour force and 3 percent by value of agricultural output (Lardy, 2014, p. 62).

The other side to this argument is that individualisation, formalisation and 'certainty' has seen relative deprivation for some, with de Soto's (2000) claim that formalising individual title is beneficial to the property-holding poor questioned by the Chinese experience. Privatisation and the establishment of individual title, has often meant forced expropriation by predatory and corrupt state actors at the expense of both income streams from land and social support. Around 200000 hectares annually are expropriated, dispossessing more than 40 million by the first decade of the 21st century, with an additional 2-3 million annually since (Hsing, 2010). One recent survey found 43 percent of villages had experienced compulsory acquisitions (Keliang & Riedinger, 2011). Expropriated land has often been passed on for huge profits, at a median price at ten times the compensatory price and sometimes as much as 40 times (Keliang & Prosterman, 2012). With the distinction between state and private actors often hard to make, state expropriation for 'public good' is sometimes the quasi-legal enrichment of already powerful elites (Yang, 2012). The number of protests – 187 000 in 2010 alone with protests continuing into 2015; two thirds of which were related to rural land issues - suggests expropriation has been strongly resisted (Hoffman & Sullivan, 2015). While there is a requirement that 'reasonable compensation' be paid, peasants have little legal recourse over this sometimes nominal amount - one survey found over 20 percent received none in any event - leaving them adrift in a world for which they are little prepared, some in poverty and in various states of alienation, and with women and non-elites often suffering greater relative deprivation (Keliang & Riedinger, 2011; Wilmsen et al., 2011). A recent law that will expand individuals' right to sue the government over land and contract issues is unlikely to greatly change the situation, given China's lack of an independent judiciary. The devolution and privatisations of use-rights of previously collectively owned rural assets such as forestry and irrigation has disproportionally helped large farmers who are often the local political elites (Zhang, 2012). Privatisation has seen elites expropriate formerly collectively-owned rural enterprises (Webber, 2012), although Huang (2012) suggests this is partly a formalisation of existing property holdings. Recent discussions on opening rural land to foreign investment will likely add to pressure for land alienation.

As such, rather than individually and legally defined title rights protected by rule of law and a constrained state – conditions somewhat absent - the protection of rural property rights is as much the ability or inability of *collective* and political organisation to resist or channel predatory state actors: not necessarily a question of individual legal title, but one of social and political mobilisation, networked links between state and non-state actors, the assertion of ostensible legal and civil rights and construction of identity as peasants and political actors, and the persistence of informal institutions (Hsing, 2010; Hess, 2010) – what Markus (2012) terms a 'bottom-up' process of protection. There are two ways of understanding this: de-collectivisation/individualisation and formalisation in a negative sense as removing property protection, particularly in the case of collective rural land, but also in some cases urban land development - with the *de-collectivisation* and hence dis-empowering of peasants, and their alienation from social and political networks that maintained their power, with state and networked private actors using quasi or non-legal manipulation, financial incentives, intimidation and outright violence to move peasants and others off their collective land and individual plots, particularly by undermining organised resistance and playing off individuals against each other (Hsing, 2010; Yang, 2012). Second, the use of the collective processes of politics in a *positive* sense as protection of property rights in the face of the lack of formal and/or functioning institutions, including through forming coalitions with social and political actors – and perhaps playing-off possibly competing agendas of local and central state actors - and drawing attention to the existing laws that are being broken. Collective action also functions to resist and channel expropriation in more ways more favourable to collective owners, and to assist farmers in their dealings with powerful business interests. As Zhao & Webster (2011) show, networked collective owners were able to force concessions from local government during property appropriation in Xiamen, including a compensation package for lost property and production, and receipt of part of the increase in land value driven by infrastructure investments. Hess (2010) shows in his study of 'nail houses' resisting forced expropriation, how local resistance can force higher prices and other concessions. Mao (2012) notes the myriad forms of resistance used, including building networks with intellectuals and legal professional and direct petitions and letters to central government, with some limited success. During 2004, for example, resistance activity led to 33,900 illegal land cases being prosecuted, '59% of the total land acquisition fees owed to the farmers [being] returned [and] 4735 development zones of various kinds…retracted' (Mao 2012, 81). In the absence of legal protection for property rights, some local state ownership also provides protection for marginalised groups, with local and other elites in completion with other central and other local elites, and SOEs providing social services (Szelenyi, 2012). These forms of protection and resistance are political and collective, and hence by their nature tend to the ambiguous. To sum, a stronger degree of certainty and individualisation is seen in formalisation: but this reduction in ambiguity has seen losses to certain groups with debated gains in efficiency. In this vein, Zhang & Donaldson (2013) argue while it is questionable that privatisation will increase output overall, the likely mechanisation and decrease in labour use will see rural workers impoverished: so the question is also who benefits from technical efficiency and individualisation.

Town and Village Enterprises

A central challenge the Chinese case provides to orthodox models is that a variety of forms of 'rural', town or 'village' ownership of enterprises (TVEs), including collective, have been the basis of a number of successful business developments. In some accounts, TVEs were a key driver of economic development, particularly in the 1980s when they accounted for around one third of industrial production, providing much of that decade's growth spurt, poverty reduction and income increases (Huang, 2008; Lardy, 2014; Young, 1998). Some of these rural enterprises were initially managed along ostensibly 'socialist principles', although this was perhaps a flexible term, in the face of hostility to private and other businesses that lasted throughout the post-reform period to varying degrees. However even before the economic liberalisation agenda beginning in 1978 – at least once the Cultural Revolution had run down - rural villages were involved in establishing myriad industrial enterprises with a large variety of ownership arrangements, including collective ownership where villages would provide funds and where village and party elites would provide managers, a variety of contractual forms, shareholding, leasing state assets, local government, leasing out land to entrepreneurs, and outright albeit sometimes hidden private ownership (Hsing, 2010). This drew on a long pre-revolutionary history of such relationships, with highly embedded trust, political, lineage and kin networks part of these various ownership forms, and where trust and blood relationships substitute and complement contractual and other legalistic forms, and provide informal forms of credit (Koo, 2013; Peng, 2004; Xu & Yao, 2015). It also echoed a pre-revolutionary history of commercial activity, with rural villagers noted for their strong commercial focus with a 'dual system combining farming and handicrafts for household consumption and commercial sale' (Wu 2002, p. 187).

This is one of the more contested aspects of the Chinese development story - but fits well with the argument that ambiguity may have assisted development in an uncertain and changing environment – is that in many cases apparent variants of collective and/or networked local government ownership were hidden forms of private ownership, with these property forms differing by region and allowing for comparative experimentation (Young 1998; Lardy, 2014; Webber, 2012; Xu, 2011). Huang (2012, 154) is adamant the majority of TVEs were in some form of private ownership in the 1980s – albeit in often ambiguous and hidden forms, as the Chinese government 'had not developed a legal framework for private entrepreneurs to register their businesses as explicitly private [so] many private entrepreneurs …registered their businesses under the collective township and village enterprise.' This de facto toleration was in contrast to urban areas where land was state-owned and private business faced severe constraints and official hostility. Webber (2012) sees ownership forms varying, often by region, with privatisation of collectively-owned business not a reflection of declining efficiency of the enterprises, but a question of manoeuvring of political and social elites to gain control. De facto or hidden private ownership moved towards de jure private ownership when this became permissible in the later 1980s, with a reversal in 1989 after the Tiananmen Square demonstrations, with private ownership finding favour again in some accounts by 1992.

The ambiguity of collective/local/private ownership highlights how murky the nature of ownership can be. The distinction between local and central state actor and party cadre, kin, village elite and business management and ownership was and remains loose, with individuals sharing roles (Feng et al., 2014). Indeed, Lardy's (2014) and Chen et al. (2009) analysis suggests how difficult it can be to allocate firms to public or private; although formalisation and clarity seems to be increasing over time. Nor was there an irresistible development over time towards individually or privately owned firms. Although there was a privatisation drive in the 1990s, some regions maintained strong networks of local government involvement and control, and collective ownership; while other regions moved towards greater private ownership (Chen, 2005).

To put this a more direct challenge to orthodox development models, the lack of clarity of property rights during transition may have assisted local entrepreneurs to develop businesses in complex and changing environments, with ambiguity allowing them to circumvent or stay out of the potentially damaging gaze of forces - including central state forces - that could undermine this development; at the same time marshalling political and social networks to provide some protection, and provide other market opportunities. As Li (1995) argues ambiguous and loosely defined collective property rights allowed political networks to form to find ways around poorly or badly developed regulations - such as they existed - and to gain access other business opportunities: similar to 'greasing the wheel' arguments for corruption. But I would go further than Li (1995); ambiguity allows *rule development and formation* in a transitional environment. His is a largely static argument: mine a dynamic one. If rules are not clear or still being formed, this allows the processes of politics, social life and intertwined kinships networks, themselves sometime ambiguous and uncertain, to seek to construct, define and interpret rules to work in their favour; and even to *bamboozle* and hide from official eyes. Politics is to a degree about constructing meaning and authority; and the rules of property and exchange can also be open this to construction. As such, collective and ambiguous property rights may have marginal advantages in economic development in some cases, particularly in states of transition, and where other formal institutions are also weak or absent; or indeed where existing formal institutions and competing political forces may be a threat to development. Ambiguity and uncertainty provides opportunity as well as costs, including the ability to experiment and innovate in ownership and business forms. The existence of hidden forms of private business, but also of other ambiguous property forms, provides some empirical support for this. Formal structures might perhaps 'catch-up' over time.

State ownership and control

The orthodox doctrine has it that privately owned firms should be the engines of development. We have already seen that TVEs were managed through myriad ownership forms, including networked collective, local government and (sometimes hidden) private. The role of state ownership and control is also more complicated than development doctrine would hold. In the standard model, developing states would replicate the ostensible Anglo-American model where inefficient SOEs would be replaced by more competitive and efficient stand-alone private corporate entities. Again, things are not so simple in China. First, there is not been an inevitable drive towards private control, with some (albeit contested) accounts suggesting that state ownership and control has become *more* important in recent times (Zhang, 2013; Collins & Gottwald, 2014; Wei, 2015; for alternative views see

Lardy, 2014; Whyte, 2009). Second, there is a body of contested evidence that suggests state-owned and controlled firms do not suffer on a variety of measures of performance (Guest & Sutherland, 2010). Both points are complicated by the difficulty of clearly separating state and non-state control even by strong proponents of a privately owned-market driven China (see Lardy, 2014), and where 'guidance' over industry is exerted by state/Party actors extending beyond formal ownership.

How is this relevant to our argument? I argue in the absence of rule or law and state constraint the exercise of networked power by state actors can allow development and protect property, often with these state actors having close ties to local elites, and with state elites so overlapping with business elites that distinctions can be hard to draw. Power, often manifested and sometimes constrained through political/social networks, in this case substitutes for legal/rational protections. This seems to be without obvious losses of efficiency, at least in the Chinese case. Again, this supports our assertion that inherently ambiguous and contested political variants of property rights – even with multiple different forms within the same country and in China's case clear differences in rural and urban settings – may act as alternatives in the absence of 'good' (sometimes) legal institutions, including providing protection in the face of 'bad' ones. This assertion of networked power also assists in experiment and innovation in business practices and rules and business development in general, in the face of ambiguous and competing central and regional state, economic and social forces, and competing political and bureaucratic elites that might resist such perhaps ideologically or politically difficult changes, at least rhetorically – such as mixed regard towards formally private businesses that lasted in some accounts into the early 1990s, and varied by region. The local and decentralised aspect of Chinese government, and the degree of competition between regions, provided spaces for experiment and innovation in rules, business forms and development, allowing the discovery of 'new market niches…inventive ideas [and] new approaches' (Xu, 2011, 1109; see also Whyte, 2009). The very nature of this ownership and control is ambiguous, with actual mechanisms of property protection differing from an increasingly formalised property regime (McCarthy, 2012; contra Lardy, 2014). In any event, claimed recent formalisation and privatisation occurs after decades of remarkable development when these conditions clearly did not hold.

The state remains a leading and perhaps dominant business actor in China, with policy directions changing over time. For example, 1995-7 saw a series of privatisations. Initially driven by central government focussed on reforming large and medium enterprises into modern corporations, and small scale enterprises into shareholding cooperatives, the drive was seized upon by local authorities to sell off state assets (Lo, 2011). However, in the face of growing unemployment and other poor economic outcomes, the policy was reversed in 1998, with a greater focus on revitalising the state sector. More recently, China's state-owned enterprises (SOEs) have been subject to degrees of privatisation with only 5,493 of the 27,950 first tier subsidiaries in China's conglomerates of firms known as business groups remaining registered as state-owned (Guest & Sutherland, 2010). However, Zhang (2007, p. 588) notes concentration increased between 2002 and 2005, and while state-owned enterprises numbers decreased by 20 per cent, 'sales turnover, realised profits and tax revenue contribution…reached 35, 45 and 57 per cent respectively' of the total; providing some support for la Porta et al.'s (1998) argument that business concentration can be a response to lack of functioning formal institutions. Xu (2010a) estimated state-owned businesses controlled 50 percent of industrial assets; although Lardy (2014) sees a decline to

26 percent by 2011 (cf Anderson, 2005). However it is sometimes difficult to untangle private, state and collective ownership, and who owns what, where private owners, managers and politicians can sometimes be one and the same, and where the state may own controlling and/or majority shareholdings of large numbers of even listed firms. Indeed, a large minority - or in some account a majority - of apparently private listed firms have a controlling state ownership (Chen et al., 2009; Shinong et al., 2009). Moreover, there was claimed to be a reassertion of state engagement in the economy particularly after the financial crisis of 2008, with the 21st century seeing the implementation of a "national champion" policy to form large state-owned and/or controlled 'business groups' of companies, similar to Japanese Keiretsu, with state power extending beyond direct ownership (Zhang, 2013).

Some industries remain clearly state controlled. Larkin (2014, 81) argues privatisation has occurred in 'contestable sectors of the economy [with] low barriers to entry'. [However with] 'natural monopoly, high capital requirements, or government regulation, the dominant position [of] state firms has…*eroded only slightly (my emphasis)'.* The financial industry remains state dominated (Collins & Gottwald, 2014; Walter & Howie, 2011). A recent *Wall Street Journal* analysis claims state control has increased with assets at majority state-controlled enterprise growing by '90% to 25.1 trillion yuan' in 2012 compared to 2008' (Wei, 2015, np). Keith et al., (2014) claim privatisation has been more about moving property from central to local government ownership, rather than into private hands. Focusing on formal ownership may miss the point in any event, with control expanding beyond ownership, and sometimes expressed through suasion and 'voluntary' guidance measures, particularly as manifested through the state-controlled but not necessary entirely owned business groups (Guest & Sutherland, 2010; McGregor, 2012). The government announced in 2015 that SOEs and business groups would be further concentrated and reduced in number, with proposed reforms including mixed forms of ownership including private and foreign investors, restructuring and mergers, and the use of share listings (Wie, 2015). Such a move seems unlikely to reduce state power, even it reduces direct ownership.

China also questions notions that private ownership is associated with better performance on various measures. In general, the consensus seems to be that there is little difference either way, although private performance may be better after the financial crisis. Some studies find privately owned firms generally performed *worse* than state or collectively owned ones in the 1980s, albeit with Lo & Tian (2002) arguing this was due to official hostility to privately owned firms - with more efficient collective ownership often a form of hidden private. Huang (2008) claims a re-assertion of state control in the 1990s saw a comparative reversal on some measures in the 1990s that had been assisted by the TVEs - including income disparity and even some poverty measures - but concedes strong economic growth continued. Qiulin (2008, 198) found 'no evidence that a state-owned…is less efficient than a privately-owned [property company and are] larger…more profitable, attract more highly educated people, and pay senior managers higher salaries'. Chen et al. (2009) measured performance of privately-controlled listed firms, firms that had a controlling state interest, and local government and central government state-owned enterprises, on various measures including profitability, productivity and market value. *Centrally-owned SOEs did best overall*, local-government SOEs were second, while privately-controlled companies were only marginally better than state-controlled listed companies. World Bank economist Xu (2010b, n.p.) found that before the financial crisis on average the 'profitability of the overall industrial SOEs [was] roughly comparable to their [private] non-SOEs peers', albeit with sectors highly-monopolised by state firms contributing most to the average. Guest &

Sutherland (2010) and Xia et al. (2009) argue state ownership has been and remains a key factor of Chinese economic success, with state firms able to reorganise towards greater technical efficiency. Lardy (2014) claims since 2007 productivity, profitability and return on assets of non-financial state-owned firms were less than ‘non-state’ firms; however his data shows profit margins were higher in state-owned firms from 1999-2007, and more-or-less the same after, despite the state-directed fiscal stimulus response to the financial crisis (Figure 1). Wei (2015) shows return on equity among state-controlled manufacturers averaged 11.6 percent in 2013, compared with 25.7 in private ownership. Politically connected and politically active business owners experience superior stock performance for their firms (Feng 2014, et al.). SOEs have and continue to be an important source of social services in some regions, with these not provided by other state agencies or rural villages (Szelenyi, 2012). As such, some state-owned Chinese firms, rather than simply economic units delivering revenue and/or profit and/or shareholder value, are organisations highly embedded in social and political life delivering a variety of social services and sometimes taking over failed privatisation efforts, with the conflicting demands this entails; but given this surprisingly little evidence of poorer performance. Indeed, perhaps links to political and social life improves performance on certain measures even for private firms (Feng, 2014, et al.).

In any event, the state and the Communist party maintain a role in ‘constructing a harmonious society’ through direct or ‘voluntary’ state control in numerous areas (Lo, 2011; cf McGregor, 2012) suggesting an Anglo-American shareholder model of free-market capitalism and a market/non-market Manichaeism might be irrelevant. There is no inevitability that the Party will give up its economic leadership, to fulfil some teleological view of free-market development, whatever formal laws and apparent ownership structures show. To sum, power and politics and embedded networks – albeit ambiguous and somewhat unstable - could substitute for the lack or incapacity or undesirability of formal and other institutions, providing avenues for economic development; as the same time assisting in new rule formation. Debate continues to whether this is part of a transition to a full-blown Anglo-American shareholder and/or free market capitalism (if such a model even exits in reality), or some sort of equilibrium in itself. Formalisation of property, such as it is in China, sometimes seems to be the post-hoc recognition of evolving and ambiguous situations – a recognition that rules are becoming somewhat settled, not a setting of the rules. But treating supposedly formalised rules as necessarily determinate of how relationships manifest themselves can be problematic: it tends to the naive when talking of authoritarian societies without rule of law and judicial independence, and where ambiguous informal and other power networks – including hidden ones - might be where things actually happen, and where formal laws can serve rhetorical and legitimating functions to mask actual processes (cf McGregor, 2012). As such, ambiguity in its various forms will likely remain an element of property and business development in China for some time yet.

Conclusion: China, rule-making and implications for economic development

Formal and legal institutions and certainty matter in development, but so do politics and civil society, and as we show, perhaps forms of ambiguity. Certainty is a focus of orthodox and neoliberal models of development, which, drawing on mainstream neoclassical economics, hold that clearly and legally-defined individual private property rights, protected by a constrained state, are a prerequisite for economic development. I have shown that the role of private property in China's economic development is seemingly not as orthodox models would prescribe. In particular, the lack of clarity, ambiguity and sometimes collective nature of property rights has seen political manoeuvring, collective action and use of kinship and political networks and ties to facilitate development; but also to resist predatory and disruptive forces; and to innovate and find new spaces in the period of transition. Political and social manoeuvrings and exercise of networked political power and authority might indeed *compensate* for the lack of formal institutions, however messily and imperfectly. These may provide a limited degree of protection for economic development, even if by its very nature political and social action itself is ambiguous, re-interpreted, contested and somewhat unpredictable. A degree of ambiguity might also provide opportunities, as well as costs. If rules are unclear, if boundaries are not fixed, there can be gaps where experiments can be undertaken and where *rules can be remade, reinterpreted and re-fashioned* to facilitate economic development. China's rapid economic and political transition after 1978 provided such an opportunity. As such, certainty and predictability may be good or bad, depending on the context, especially in the face of institutions, formal or otherwise, that may not facilitate development.

Perhaps the Chinese experience is an exception to a general rule, with private property and institution building models holding for most. Indeed, future trajectories are hard to predict, and it may be too soon to throw the baby out with the bath water. Another authoritarian and state-dominated economy, the Soviet Union, grew at comparatively high rates from the 1930s to around the late 1950s and provided an alternative model for decades after (Easterly & Fischer, 1995). Japan was supposedly set to overtake the United States as the world's largest economy for much of the 1980s. Perhaps the apparent contradictions of the Chinese economy once technological catch-up is achieved might see growth fall off or even reverse. Social unrest is high in rural areas and China's colonial fringes: and the problems of massive environmental degradation including food insecurity; growing inequality; increasing wage pressures; an underdeveloped internal market and over- dependence on low-cost manufacturing exports at the low end of the value chain with potential for relocation elsewhere; huge infrastructure investments of sometimes questionable value; stresses of internal migration; an aging population; corruption and autocracy; bad debts and inefficient financial markets; and recent slowing of economic growth and asset instability shown in the 2015 share market crash, might cause economic problems and accelerate political instability, as they have in other countries (DeRouen & Goldfinch, 2012; Walter & Howie, 2011). China might be an anomaly or statistical outlier; although whether an economy as important and large as China can be treated as such is a moot point. It might be an alternative model of development - with 'varieties of capitalism' having different trajectories of development and different winners, losers and/or positive and negative characteristics, and different functions within a world economy (Hancke, 2010). Indeed, there is a veritable cascade of studies on Chinese divergence - particularly economic divergence from an industrialising West - with a focus on 'Asian' and Confucian cultural values, authoritarian rule, debates about the role of population growth, cost of capital, urbanisation, warfare and technological drivers of development, amongst other things (Brandt et al., 2013; Pomeranz, 2000).

To treat China as an exception to a general rule and hence to be safely ignored in broader discussion disregards other challenges to orthodox development and institution building models. Wade (1990) showed how successful South and South East Asian development was characterised by degrees of autocracy and state ownership, planning and market control, including of the financial industry. Goldfinch et al. (2013) found little relationship between good governance and institution building agendas and implementation and performance on Millennium Development Indicators in low income countries. Fails and Krieckhaus (2010) argue the successful North American-Australasian case is a potentially un-generalizable exception, with the success of the four 'British Clones' more to do with the nature of British settlement and the human capital settlers brought, with settlers seeking similar institutions to which they had known in Britain, and with growth *leading* to property rights rather than the other way around. Chanda and Putterman (2007, p. 411), excluding the 'neo-Britains' from their analysis, claim that the advantage of the West in development terms was temporary and 'social [including state] capacity' of early starter agrarian states accounted for economic development as they caught up with the West in post-colonial times, rather than 'traces of property rights regimes'. Zawojska & Tomasz (2013) found little support for the role of private property rights in improving economic performance in Eastern Europe. There is body of statistical studies that question the link between property rights and economic performance (Barro & Sala-i-Martin, 2004). De Soto's claim that formalised individual title assists the poor to obtain credit for business development is falsified in studies across the world (Goldfinch, 2015). Informal and illegal property provides workshops and sites of business in Latin America and African cities, as they did in industrial and pre-industrial Europe (Crankshaw, 2000; Berry, 2013). On the North American frontier of the 18^{th} and 19^{th} centuries, beyond the reach of a formal legal/rational state, political and social action, informal norms and institutions of property and exchange allowed for economic activity (Pisani, 2007). Tellingly, some recent historical studies question the actual degree of protection and certainty of individual property rights in developing Europe itself, including England, well into the Victorian age, with these rules ambiguous, contested and politicised (Angeles, 2011). Indeed, Grindle (2004) questions whether the West's historical and economic development itself reflected good governance and institution building prescriptions. The sheer complexity of social and political forms of property across time and space – and the ambiguous nature of many of these relationships – suggest ambiguity and social and political construction of rules and meaning has been an inherent part of property and economic development.

Finally, if ambiguity, informality and exercise of political and social forces might work in the favour of development in particular or singular transitional cases, it is worth repeating that aspects of individualisation, formalisation and certainty might also work against some sectors of the population, particularly if there is a lack of supporting legal/rational and democratic protections. Too early formalisation of property rights and other rules, particularly before other supporting institutions are in place, may even be deleterious to development, shutting off avenues for innovation (cf Goldfinch, 2015). Nor does everyone win with all variants of certainty, institutional or otherwise, and formalising property rights is often the construction of greater certainty where it has not existed, with the often brutal assertion of self-interested power. As China shows, establishing individual title and privatisation may have had deleterious effects upon the rural poor. There other contemporary and historical examples. Establishing individual title in 19th and 20th century New Zealand, along with confiscations, saw massive land alienation for indigenous Maori, with acreage falling from 66 million in 1840 to 3 million by 1998, and with associated economic and social disadvantage (Bess, 2011). Establishing individual title from communal lands has been associated with alienation of land from original owners in Kenya and Mali, with little benefit to the poor (Musembi, 2007). English enclosures from post-medieval times on and Scottish highlanders dispossessed of their traditional lands in the clearances of the 18th and 19th century saw establishment or assertion of private title sometimes increased impoverishment, inciting resistance and virtual civil war (McDonagh, 2013). Privatisation in post-Soviet Russia and the former Soviet empire was in many cases expropriation by former Soviet officials and their cronies.

In sum, there are growing critiques of orthodox accounts of economic development, and particularly their central focus on legally-titled individual property rights and institutional certainty. I suggest one possibility to explain the divergence found in some studies: that particularly in periods of transition, diverse networks of social, political and state power can act to facilitate business development and property protection in the face of, or the lack of, formal 'good' or bad institutions. Indeed, the novel claim I make is that ambiguity of rules in a transitional period might facilitate the formulation of new rules and provide new spaces for innovation and departure from structures that can hinder development.

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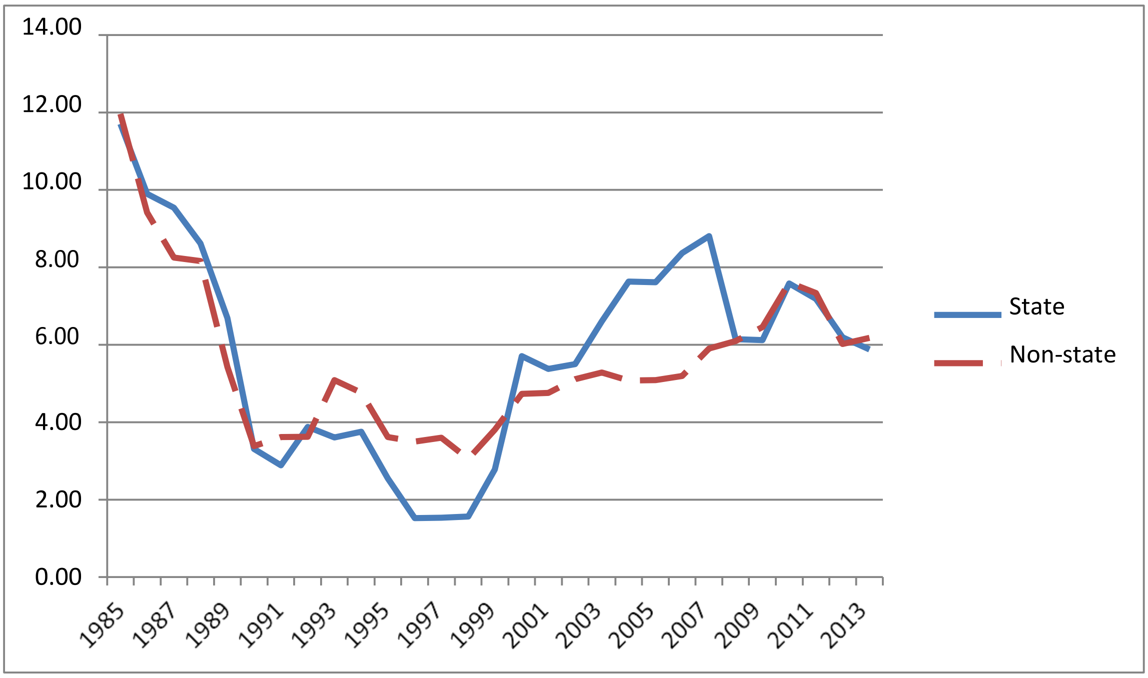
Table 1
Governance and Institutions: China, OECD and Middle/Low Income

		China	OECD	MI/LI[1]
Property Rights[2]	**(0-100)**	**30**	**79**	**10**
Polity2[3]	**(-10 to 10)**	**-7.0**	**9.7**	**1.97**
Rule of Law[4]	**(-2.5 to 2.5)**	**-0.419**	**1.298**	**-0.321**
Pol. Stability[4]	**(-2.5 to 2.5)**	**-0.184**	**0.997**	**-0.225**
Govt. Effectivenss[4]	**(-2.5 to 2.5)**	**-0.206**	**1.421**	**-0.344**
Corruption Cont.[4]	**(-2.5 to 2.5)**	**-0.736**	**1.357**	**-0.330**

Notes

1. Middle Income and Low Income, excluding China and OECD. Data from 2005, 2006.
2. Heritage Foundation.
3. Polity VI democracy index.
4. World Bank Governance Indicators. Rule of Law, Political Stability, Government Effectiveness and Corruption Control.

Figure 1
Profit as Share of Sales Revenue in Chinese Industry by Ownership[1]



Source:
Adapted from Lardy (2014). National Bureau of Statistics of China. Available from http://bookstore.piie.com/book-store/6932.html. Total profits are earnings before corporate income tax for firms with revenue greater than RMB5 million 1998-2011; from 2011 RMB20 million. Before 1991, gross output value replaces sales revenue.

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[ii] The term innovation includes: 1. Innovation in terms of institutions and property arrangements and rules 2. Innovation in management technologies 3. Innovation in business and management processes, including products and marketing. Given the focus on this article, the use 1 is more common.
[iii] The Law on the Contract in of Rural Land (2002) allows contract rights with a term of 30 years for agricultural land (Mao, 2012).